IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 95 of 2000()

CRA.40/1995 of SESSIONS COURT, KOLLAM
CC.144/1992 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA
.....

REVN. PETITIONER/ACCUSED:

V ARGHESE JOHN @ KUNJUMON,
KARUMATTATHU CHARUVILA PUTHEN VEEDU,
PULAMON.P.O., KOTTARAKKARA TALUK.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENT/COMPLAINANT:

STATE, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal R.P.No.95 OF 2000 ()

Dated this the 26th day of September, 2007

O R D E R

Revision petitioner was the accused in C.C.No.144/1992 on the file of the Judicial First Class Magistrate Court, Kottarakkara. A private complaint was filed by the Food Inspector alleging the commission of offence punishable under Sections 2(1a)(b), 7(i), 16(i)(a)(i) of the Prevention of Food Adulteration Act, 1954 read with Rules 5 Appendix B.A. 07.04 Rule 44(g), Rule 47 and Rule 50(i) of P.F.A. Act and 50(i) of the P.F.A. Rules 1955. The allegation in the complaint was that, on 10.2.1992, without licence, petitioner was running an ice stick manufacturing unit under the name and style “Shine Ice Works” in Building No.K.P.VII/39 and he sold adulterated ice stick to the Food Inspector (PW1) from his shop. According to PW1, he is the authorised officer. He produced Ext.P1 to prove the same and he visited the shop at 7.45 a.m. and gave Form VI notice. Accused was present in the shop. PW1 purchased

900 gms of ice stick (18 in numbers) on payment of Rs.4.50. According to the prescribed procedure, the ice stick purchased was melted and sampled and one part was sent to public analysis and it was found to be adulterated as per Form III report. Therefore action was taken as he was conducting the factory and engaged in manufacturing and sale of ice sticks without licence. It is found that instead of sugar, saccharin was used. It was argued that owner of the building is not the accused, Varghese John but it Varghese. J. But it an admitted case that when he was in the premises, ice sticks were purchased by the Food Inspector. There is no case for the petitioner that he was simply manufacturing and not selling the same. In fact he sold 18 ice sticks to PW1. Ext.P2 is the Form VI notice and Ext.P2(a) is the signature which shows that Form VI notice was received by the accused. Ext.P3 is the voucher issued by the petitioner and Ext.P4 is the mahazer. Ext.P10 is the certificate of Public Analysis. Ext.P11 is the letter of the Panchayat Officer and Ext.P12 is the reply from the Panchayat Executive Officer which shows that the building was in the name of Varghese J. His signature in Exts.P2, P3 and P4 are identical. Therefore first contention of the petitioner that his identity was mistaken was not accepted by the trial court and

appellate court. In Ext.P3, accused himself has written his address and in that, his name was recorded as Varghese John. He earlier paid the licence fee as can be seen from Ext.P17(a). There is a case for the petitioner that the original licence was taken out in the name of father. But he was conducting the business and he signed all the papers and he himself effected sale of 18 ice sticks to the Food Inspector. The Food Inspector in chief examination stated that sample was taken as per the rules. It was first melted and then sample was taken in clean bottles and sent to the Public Analysis laboratory. All these things were proved by oral and documentary evidence. There was no cross examination that the vessel which was used for melting was not clean. There is no case before the court that the sampling was not done in a cleaned vessel. Hence the trial court convicted him. In the appeal it was confirmed. From the judgment it can be seen that there is no serious argument regarding the nature of sampling according to rules. In fact he was not cross examined for the effect if it was not done in a clean vessel or any specific violation of rule. In any event, the presence of saccharin or artificial sample in the ice stick is not justified. Hence accused was sentenced by the trial court as follows:

> "The accused is sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/- under Section 16(i)(a)(i) of P.F.A. Act in default of payment of fine to undergo S.I. for a further period of three months. For contravencing the provision of Rule 50 the accused is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.500/- under the 2nd proviso to Section 16(i) of the Act. Indefault of payment of fine the accused will undergo simple imprisonment for a further period of 30 days. The sentence shall run consecutively."

That was confirmed in appeal also. I see no ground to interfere in the concurrent findings of the court below and only minimum sentence is awarded. I find no reason to interfere in the sentence and conviction in a revisional jurisdiction and hence this revision petition is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P.95 OF 2000

O R D E R

26th September, 2007